

**CV 15 - 0186**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SUSANA LOZADA,

Plaintiff,

-against-

VERDE ENERGY USA, INC.,

Defendant.

CASE NO.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

**COMPLAINT**

SUSANA LOZADA ("Plaintiff"), by and through her attorneys, KIMMEL &  
SILVERMAN, P.C., alleges the following against VERDE ENERGY ("Defendant")

**INTRODUCTION**

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47  
U.S.C. § 227, *et seq.* ("TCPA").

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331, which grants this court  
original jurisdiction of all civil actions arising under the laws of the United States. See Mims v.  
Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant regularly conducts business in the State of New York therefore  
personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

GLEESON, J.  
GOLD M.J.

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U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

**PARTIES**

5. Plaintiff is a natural persons residing in Bohemia, New York 11716.

6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation with its principal office located at 101 Merritt 7, 2<sup>nd</sup> Floor, Norwalk, Connecticut 06851.

8. Defendant is a "person" as that term is defined by 47 U.S.C. § 153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

10. Plaintiff has a cellular telephone number that she has had for over a year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in or around November 2014, and continuing through December 2014, Defendant called Plaintiff on her cellular telephone on a repetitive and continuous basis.

14. During the relevant period, Defendant called Plaintiff on her cellular telephone, on average, once a day.

15. When contacting Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system and automatic and/or pre-recorded messages.

16. Defendant's automated messages identified its company name as the caller.

17. Defendant's telephone calls were not made for "emergency purposes."

1           18. Defendant's messages would state its name and that its call was "for marketing  
2 purposes."

3           19. Plaintiff never provided prior express written consent to Defendant to call her  
4 cellular telephone number or to contact her regarding any goods or services offered by  
5 Defendant.

6           20. Upon information and belief, Verde obtained Plaintiff's cellular telephone  
7 number by way of an Internet advertisement.

8           21. Defendant Verde's Internet advertisement disclosure said *nothing* of prerecorded  
9 messages.

10           22. Any consent conferred by Verde's Internet advertisement disclosure is expressly  
11 conditioned upon Plaintiff clicking 'Interested' on the advertisement.

12           23. There was no 'Interested' button on the advertisement  
13

14           24. Despite the above, Defendant persisted in calling Plaintiff on her cellular  
15 telephone for several weeks.

16  
17                   **DEFENDANT VIOLATED THE**  
18                   **TELEPHONE CONSUMER PROTECTION ACT**

19           25. Plaintiff incorporates the forgoing paragraphs as though the same were set forth  
20 at length herein.

21           26. Defendant initiated multiple automated telephone calls to Plaintiff's cellular  
22 telephone using a prerecorded voice.

23           27. Defendant initiated these automated calls to Plaintiff using an automatic  
24 telephone dialing system.

25           28. Defendant's calls to Plaintiff were not made for emergency purposes.

1           29. Defendant's calls to Plaintiff, in and after November 2014, were not made with  
2 Plaintiff's prior express consent.

3           30. Defendant's acts as described above were done with malicious, intentional,  
4 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the  
5 purpose of harassing Plaintiff.

6           31. The acts and/or omissions of Defendant were done unfairly, unlawfully,  
7 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal  
8 defense, legal justification or legal excuse.

9           32. As a result of the above violations of the TCPA, Plaintiff has suffered the losses  
10 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles  
11 damages.

12  
13  
14           WHEREFORE, Plaintiff, SUSANA LOZADA, respectfully prays for judgment as  
15 follows:

- 16           a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
17           b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
18           15 U.S.C. § 1692k(a)(2)(A);  
19           c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
20           costs, pursuant to 15 U.S.C. § 1693k(a)(3);  
21           e. Any other relief deemed fair and proper by this Honorable Court.

22  
23           **DEMAND FOR JURY TRIAL**

24           PLEASE TAKE NOTICE that Plaintiff, SUSANA LOZADA, demands a jury trial in  
25 this case.

1  
2 RESPECTFULLY SUBMITTED,

3 Dated: January 13, 2015

4 KIMMEL & SILVERMAN, P.C.

5 By: 

6 Craig Thor Kimmel

7 Attorney ID #2790038

8 Attorney for Plaintiff

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